

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

SHAWN MURPHY,

Plaintiff,

v.

Case No. 21-cv-52-pp

WISCONSIN DEPARTMENT OF CORRECTIONS,
WISCONSIN DIVISION OF COMMUNITY
CORRECTIONS, KENDRA HEEREY,
and ROSE MARIE BARANEK,

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTIONS TO PAY INITIAL PARTIAL
FILING FEE FROM RELEASE ACCOUNT (DKT. NO. 8) AND TO WITHDRAW
HIS JURY DEMAND (DKT. NO. 10)**

On January 13, 2021, plaintiff Shawn Murphy, an inmate at Waupun Correctional Institution who is representing himself, filed a complaint under 42 U.S.C. §1983. Dkt. No. 1. He also filed a copy of his institutional trust account statement showing a balance of \$0.00. Dkt. No. 3. The same day, the court ordered that by February 12, 2021, the plaintiff either must pay an initial partial filing fee of \$1.71 or file a letter explaining why he could not do so. Dkt. No. 6.

On January 19, 2021, the court received a letter from the plaintiff saying that he could not pay the full \$1.71 initial partial filing fee because he had a balance of only \$0.94 in his release account. Dkt. No. 8. He also provided a copy of his trust account statement from December 2020, which confirms the \$0.94 balance in his release account and shows a balance of \$0.00 in his

regular trust account. Dkt. No. 9. The plaintiff asked to pay the \$0.94 from his release account toward the initial partial filing fee and then “add the remainder owed to the payments coming [sic] from the plaintiff’s prisoner’s trust account.” Dkt. No. 8 at 1–2.

The court will grant his request as follows: The plaintiff may use the funds in his release account to pay the initial partial filing fee *only* if he does not have sufficient funds in his regular account to pay all of the initial partial filing fee. See Carter v. Bennett, 399 F. Supp. 2d 936, 936–37 (W.D. Wis. 2005). If the plaintiff has money in his regular account, he first must use that money to pay the initial partial filing fee. The initial partial filing fee is \$1.71. The plaintiff’s partial trust account statement from December 2020 shows a balance of \$0.00 in his trust account. If any money becomes available in that account, he must ask his institution to withdraw that full amount from his regular account first and then withdraw the balance of the \$1.71 from his release account. In other words, he must use *all* the funds in his regular trust account before he can access the money in his release account. The plaintiff should explain this to the business office at the prison, or even show them this order, to ensure compliance with this order.

The plaintiff also asked to withdraw his demand for a jury trial. Dkt. No. 10. He stated that he does *not* want a jury to hear this case. Id. The court will grant that motion.

The court **GRANTS** the plaintiff’s motion to use his release account to pay the initial partial filing fee, as described above. Dkt. No. 8. The plaintiff

must send the initial partial filing fee, or a letter explaining why he cannot do so, in time for the court to *receive* it by **February 12, 2021**. If the court does not receive the initial partial filing fee by the end of the day on February 12, 2021, the court will dismiss the case on the next business day.

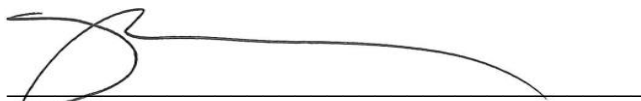
To the extent the plaintiff does not have enough money in his regular trust account to pay the initial partial filing fee, he is responsible for making arrangements with the business office at the prison to pay the remainder of the initial partial filing fee from his release account. The plaintiff may use the money in his release account to satisfy the initial partial filing fee *only* if insufficient funds are available in his regular trust account.

The court will send a copy of this order to the warden of Waupun Correctional Institution.

The court **GRANTS** the plaintiff's request to withdraw his demand for a jury trial. Dkt. No. 10.

Dated in Milwaukee, Wisconsin this 2nd day of February, 2021.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

HON. PAMELA PEPPER
Chief United States District Judge